BIG HORN CALCIUM CO.

IBLA 79-224 Decided December 26, 1979

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting Mineral Patent Application M-30339.

Set aside and remanded.

1. Mining Claims: Location -- Mining Claims: Placer Claims

   No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2. Placer locations may be made by associations of claimants, limited in size to 20 acres for each individual claimant, up to a maximum of 160 acres.

2. Administrative Procedure: Adjudication -- Applications and Entries: Generally -- Mining Claims: Contests -- Mining Claims: Determination of Validity

   Where a mineral patent application is supported by a mineral examination of the claim which finds a valid discovery and recommends issuance of a patent for a portion of the claim, the BLM may not summarily reject the application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

APPEARANCES: William G. Mouat, Esq., Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On September 5, 1974, the Big Horn Calcium Company filed its mineral patent application M-30339 for two placer mining claims, the BH #1 and the BH #2. By subsequent amendment July 5, 1977, the BH #2 was withdrawn from the application.

Mineral examination of the claim resulted in a favorable BLM mineral report of February 27, 1978, finding a valid discovery of valuable limestone. The report recommended clear-listing 150 acres of the claim for patent.

The facts of record show that the BH #1 was originally located November 1, 1971, by an association of 8 locators, i.e., Robert R. Weaver, Neil P. Stadtmiller, Paul W. Bennett, Katherine Weaver, Irene M. Stadtmiller, Wyola Bennett, Harold Cessford, and Mercedes Cessford, for a total of 160 acres. On that same date, November 1, 1971, the claim was quitclaimed by these 8 locators to the Big Horn Calcium Company.

Upon inquiry to the Big Horn Calcium Company the Montana State Office, Bureau of Land Management (BLM), learned that three of the original locators were officers of the Big Horn Calcium Company and a fourth locator was the Company's General Superintendent. The remaining four locators were the wives of these same individuals. From this information the BLM concluded that "the location of the BH #1 placer mining claim was made for the exclusive benefit of the Big Horn Calcium Company for the purpose of obtaining title to not only the twenty acres allowed under the mining law for a placer mining claim, but also to an additional 140 acres." The State Office found the location invalid and declared the claim null and void, ab initio.

On appeal appellant does not deny the relationship of these locators to the corporation. It denies, however, that these locators, who were stockholders, directors, and officers of the Big Horn Calcium Company, and their wives, were "dummy locators." It contends there is no proof that the locators agreed in advance to convey the claim to Big Horn Calcium Company or that they did not locate in good faith.

[1] BLM has found a crucial deficiency in appellant's application determining that the 8 original locators were "dummy locators" acting on behalf of the corporation. The law clearly provides that no placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2. Within the meaning of 30 U.S.C. § 35, it has been determined that a corporation is an "individual claimant," and therefore may not locate placer claims of more than 20 acres each. United States v. Toole, 224 F. Supp. 440 (D. Mont. 1963); United States v. Schneider Minerals, Inc., 36 IBLA 194 (1978). There is, however, no

statutory limitation to the number of placer claims that may be located by any individual claimant, but each such placer location must possess a discovery of a valuable mineral deposit in order to be a valid location.

[2] However, whether appellants' actions in this case amounted to an attempt to circumvent this 20 acre limitation is a question of fact which cannot be decided on the face of the record. Appellants specifically dispute this conclusion and have not had the opportunity to establish the bona fides of their intentions concerning the location and the conveyance of their interests to the corporation.

As previously indicated a discovery has been confirmed by the BLM's minerals personnel, and if all else had been regular, the application would have been processed and a patent issued without quasi-judicial proceedings. In this case, however, since another impediment to issuance of patent is raised, BLM should initiate contest proceedings to determine the validity of the claim. BLM may not summarily reject the application for reasons related to disputed issues of fact without notice and an opportunity for hearing. See Brattain Contractors, Inc., 37 IBLA 233, 240 (1978); United States v. O'Leary, 63 I.D. 341 (1956).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case is remanded for further action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge